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IN THE

Supreme Court of the United States

October Term, 1950.

No. 589

LELA WILCOX,

Petitioner,

vs.

TIGHE E. WOODS, HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals, for the Ninth Circuit.

LELA WILCOX,
923 South Harvard Boulevard, Los Angeles 6,
In Propria Persona.

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Petition for a Writ of Certiorari to the United States Court of Appeals, for the Ninth Circuit.

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled case on May 22, 1950.

Opinions Below.

The opinion of the District Court is reported No. 8751 B Civil, Feb. 22, 1949. The opinion of the United States Court of Appeals, for the Ninth Circuit is reported in 181 F. 2d 1012.

Question Presented.

The question presented is with respect to the judgment of restitution of rent overcharges and an injunction restraining violation of the Housing Rent Act of 1947 as

amended (50 U. S. C. A. 1881, *et seq.*) entered by the District Court below on April 8, 1949 [R. 46] and affirmed in the United States Court of Appeals for the Ninth Circuit on 22nd day of May, 1950.

Statutes Involved.

The judgment of restitution was based upon Section 205(a) of the Emergency Price Control Act of 1942, as amended (50 U. S. C. A. 1881, *et seq*) and Section 206 (b) of the Housing and Rent Act of 1947, and the injunction was granted pursuant to Section 206(b) of the Housing and Rent Act of 1947. Jurisdiction of this court is invoked pursuant to Section 1291 of the Judiciary and Judicial Code (28 U. S. C. A. 1291).

Statement.

The petitioner, the landlord renting rooms at 923 South Harvard Boulevard in Los Angeles, California, was charged with violations of the Housing and Rent Act of 1947, as amended. The question was whether she rented rooms on a daily basis or a weekly basis. Tenants testified they rented on a weekly basis. Petitioner relied on written receipts, showing that the premises were rented on a daily basis and denied renting on a weekly basis. The Court made its Findings of Fact and Conclusions of Law in which it found that the petitioner had collected rents in excess of the legal maximum weekly rent rate. The Court ordered restitution be made in the amount of overcharges and that an injunction should issue. From that judgment the petitioner appealed to the United States Court of Appeals, for the Ninth Circuit, and the judgment was affirmed.

ARGUMENT.

The District Court's Findings that the premises were rented on a weekly basis is erroneous and not supported by substantial evidence. The judgment of the District Court should be reversed and the cause remanded for a new trial.

The question involved principally is whether or not the landlord rented to tenants on a daily basis or on a weekly basis, and whether the landlord received from persons for use and occupancy of rooms rents in excess of the maximum established rent regulation. Clearly the landlord was entitled to rent a room, either on a daily or a weekly rate, and to one or two persons, within her discretion.

The landlord rented twelve rooms [Tr. 21]. All of these rooms she had the right to rent on a daily rate for $1.00 a day and all of them with the exception of Room No. 2 rented to two persons at $1.50 a day, and Room No. 2 rented to two persons for $1.75 a day. The weekly rate was set out in the schedule of the Rent Director, and rented on a weekly basis from $3.50 a room to $7.00 per room for a single person and from $5.00 per room for two persons, up to $10.00 per week [Tr. 21].

Overcharge was claimed by the appellee and respondent for the rental of rooms No. 8 and No. 11, occupied consecutively by Mr. and Mrs. Elmer Page, and for room No. 9, occupied consecutively by Olympia Lensky and Maureen Hall, and by Olympia Lensky, and by Olympia Lensky and Birdie R. Thompson, and again by Olympia Lensky. In support of this contention the court heard testimony of Mrs. Elmer Page, Mrs. Cecil Hall, the mother of Maureen Hall and Olympia Lensky. These witnesses testified that they rented by the week on a weekly basis, and did not rent on a daily rate. This is a conclu-

sion of the witnesses because the rent receipts, which were offered in evidence, have upon them "Rate $1.00 per day" and "Rate $1.50 per day." On cross-examination the witness Inez Page (Mrs. Elmer Page) identified a rent receipt for the period of May 14, 1947 to May 20, 1947, and which was signed by the landlord, and upon which appeared "Rate $1.50 a day."

Tenant Page testified on cross-examination as follows:

"Q. On what day did you become a tenant there, Mrs. Page?

The Witness: The first check shows April 28th. That was on Sunday. We moved in on the following Tuesday of '47. We rented the room on a Sunday and we moved in the following Tuesday.

Q. I show you here a receipt, a carbon copy of a receipt, rent from May 13th—5/13 to 5/20/47, rate $1.50 a day. Lela Wilcox' and that is made out to Mr. and Mrs. Elmer T. Page, is that correct? A. I would say that it was. I mean insofar as the amount $10.50 it is correct. At no time, I can reiterate, was I under the impression that there was a daily rate. [Tr. p. 14.] Later,—

The Court: Mr. Zimmerman, I understand that it has been admitted that many of these receipts were given at the rate of $1.50 a day for rental, *at the rate of $1.50 per day*. In fact, all of them that were given, Mrs. Wilcox so stated. Do you desire to pursue that further on that point?" [Tr. pp. 14-15.]

On direct examination the landlord testified that the Pages had been sent to her by the Nicholson Investment Company and that she rented rooms daily on a daily rate [Tr. p. 39].

That she didn't recall any statement to Mr. and Mrs. Page about the *rate of $1.50* a day but the rate was stated on her receipt, and she proceeded on the assumption that the rates had been fully explained to them by the person who sent them to her before they rented the room, and that the rate was on the receipt [Tr. p. 39].

The tenant Hall testified she rented a room for Miss Lensky and her daughter and that she didn't recall any daily rate because it was paid by the week.

The Court interrogated the witness Hall as follows:

"The Court: That is all. Do you have any receipts given to Miss Lensky?

Q. (By Mr. Hirst, Attorney for the Appellee and Respondent): How long did you pay the rent for Miss Lensky?

The Witness: From May to December.

Mr. Hirst: December, '46?

The Witness: Yes, I was there a year. Of course I was away for three months in Europe and Miss Lensky paid it.

Mr. Hirst: Your Honor, I don't happen to have any original receipts that were given at the time Mrs. Hall was paying the rent, but I have no objection to the use of carbons which I believe are in this book here being used. I will stipulate that they are in the same form as the ones given to the tenant Page that previously testified, Your Honor.

The Court: It shows *$1.50 a day?*

Mr. Hirst: There is a notation at the bottom of each one stating: 'Rate $1.50 per day.' I am reading one designated as No. 06660. There is no date on it but it indicates payment of $10.50 from the

period from July 21st to July 28th, 1946. Underneath there is a notation *'Rate $1.50 per day,'* signed 'Lela Wilcox.'" [Tr. p. 19.]

Later in the testimony of this witness another receipt was identified as No. 06667 and it was made out as follows:

"Received from Lensky," and for an amount of $10.50 from August 9th to August 16, 1946, *Rate $1.50 per day,* and signed by the landlord "Lela Wilcox." [Tr. p. 22.]

The witness Lensky testified that she paid $10.00 a week for rent [Tr. p. 25]. She testified she got a receipt from the landlord for $7.00, after she paid $10.00. The receipts were offered in evidence [Tr. p. 26]. She testified that the landlord said to her "That is how I make out all my receipts and that is the way I am going to make out yours."

The testimony on direct examination continued as follows:

"The Court: The second time you received a receipt did you call her attention to it and that it was only $7.00?

The Witness: No, I didn't.

The Court: It states here $1.00 per day, rate a $1.00 per day on one of these. Did you notice $1.00 a day on one of these?

The Witness: No, I didn't.

The Court: You didn't say anything to her about that?

The Witness: No."

The examination continues later:

> Mr. Hirst: Yes, I have here a series of receipts that also state $7.00 Your Honor. They are for a later period. One dated on July 5th, and the balance begin on September 12th and continue through October 24th. I offer these as Plaintiff's exhibits next in order." [Tr. p. 28.]

Of all the tenants that the landlord had the only ones to complain were Inez Page and Olympia Lensky. Mrs. Cecil Hall complained but not in respect to overcharge on her own room, only on the room that she rented for her daughter and Miss Lensky.

The tenant Page apparently had a grievance against the landlord. She testified that she lived on the premises from April, 1947 until June, 1948, until she was evicted while visiting her family. Tenant Page later testified that the landlord refused to accept the last check and she refused all monies from then on and testified as follows:

> "The Witness: We had paid until—They are holding my check. She refused our money. There was another thing. She struck our car and wrecked it while she was intoxicated." [Tr. p. 9.]

It seems unreasonable that the tenant Lensky would pay $10.00 a week over a long period of time and received a receipt for $7.00. Each receipt clearly indicated the rate to be $1.00 per day. The receipt itself is *prima facie* evidence of the amount paid to the landlord. The receipt might be explained in several ways, but the actual amount received for rent is fixed by the receipt itself in evidence.

The appellee and respondent called the defendant Shore, an agent of the defendant landlord, under Rule 43(b) of

the Federal Rules of Civil Procedure, apparently for corroboration, and to show that the landlord fixed the rental of the cabin in the rear of the property that belonged to the defendant Otto Smith [Tr. p. 34].

It was later stipulated by counsel as follows:

> "Mr. Zimmerman (Attorney for appellant and petitioner): It will be stipulated that if Mr. Smith were called he would testify substantially as follows: That the cabin was his cabin; that he had it moved from 3rd and Spring to the premises at 923 South Harvard and placed it in the back yard there, it having formerly been a hot dog stand, that the parties at least considered it as his cabin, he considered it as his cabin." [Tr. p. 49.]

The purpose of this testimony was apparently to implicate the landlord Wilcox to show that she had acknowledged that she fixed the price of the rental of the cabin in the rear on a weekly basis but the true purport of that testimony was based upon the statement of one Ruth Actor, and the statement of Ruth Actor was hearsay and not made in the presence of the landlord Wilcox.

The defendant took the stand and insisted that all of her rent receipts stated a rate of $1.00 a day or $1.50 a day. She acknowledged that she had received seven days' rent at $1.50 per day, which would make $10.50. She said that the tenants Page came to her from the Nicholson Investment Company and her instructions then to them were that she rented rooms daily on a daily rate [Tr. p. 39]. She said that her rent receipts given to the tenants Page showed a rate of $1.50 a day. She acknowledged that she allowed Mrs. Page 50 cents because they used washing machines when they did their washing, but she

insists that she kept her record straight so it would not interfere with her daily rate [Tr. pp. 40-42].

She was not interrogated with respect to the tenant Lensky except in one instance she said Lensky gave her a check [Tr. p. 52].

The tenant Lensky had previously testified she paid her rent by cash.

It would seem that the receipts that the landlord Wilcox gave, many of them offered in evidence, were all to the effect that the rent was on a daily basis and this definite proof was entirely disregarded by the trial court.

Specifications of Error to Be Urged.

If the evidence adduced during the trial is capable of two interpretations, one in favor of the petitioner and one in favor of the respondent, then and in that case the court, as a matter of law, must determine the issue in favor of the petitioner.

Rule 52(a) of the Federal Rules of Civil Procedure contemplates a review by the Appellate Court of the sufficiency of the evidence to sustain findings. If the findings are clearly erroneous they should be set aside, especially where the lower court had no better opportunity of judging the credibility of witnesses than does the Appellate Court.

> *State Farm Mutual Auto Ins. Co. v. Bonacci,* 111 F. 2d 412.

Although Findings of Fact are not to be set aside on appeal unless clearly erroneous, the Appellate Court may draw the ultimate inferences and conclusions which the Findings of Fact of the trial court reasonably induce. If

there is no dispute of evidentiary facts, on review an Appellate Court may draw its own conclusions therefrom.

Murray v. Nobles Milling Co., 131 F. 2d 470.

In a case tried without a jury the Findings of Fact may be reviewed by the Appellate Court to the extent formerly allowed by the Federal equity practice. In such a case a fact may be set aside if it clearly appears that the court misapprehended the evidence.

Katz Underwear Co. v. United States, 127 F. 2d 965.

An ultimate finding of the trial court, which is contrary to the evidentiary findings, or is based upon a misapplication of the law to the evidentiary findings, is not binding upon the Appellate Court.

U. S. v. Armature Re-winding Co., 124 F. 2d 589, and,
Corbett v. Holliwell, 123 F. 2d 331.

A Finding of Fact, although supported by the evidence, is clearly erroneous if it is against the clear weight of the evidence. In determining whether a finding was correct the Appellate Court might examine the documentary evidence, testimony on which there was no conflict and testimony in which the element of credibility of witnesses was seriously involved.

Flemming v. Palmer, 123 F. 2d 749.

Findings of Fact in an action without a jury should be set aside if they are not supported by substantial evidence, or are clearly against the weight of the evidence.

Aetna Life Ins. Co. v. Kepler, 116 F. 2d 1.

The evidence conflicts in the instant case with respect to the testimony of the witnesses for the appellee and the receipts which were put in evidence. From the receipts it would appear that the tenants paid on a weekly basis at a rate of $1.00 or $1.50 a day, although they apparently paid for seven days at a time. While a receipt is not a written instrument the terms of which cannot be contradicted by parol evidence unless it contains a binding agreement, it is nevertheless *prima facie* evidence.

Lawrence v. Premier Idem. Assur. Co., 180 Cal. 688.

The general rule is that receipts may be explained by parol evidence showing the purpose for which they were given.

Brown v. The Crown Gold Milling Co., 150 Cal. 376, and

Wimans v. Hassey, 48 Cal. 634,

and what demands they are intended to include,

San Pedro Lumber Co. v. Schroeter, 150 Cal. 158,

but even though a receipt is not conclusive, it is evidence, and very often convincing evidence against the party giving it.

Cal. Packing Co. v. Merritt Fruit Co., 6 Cal. App. 507.

And when the terms of the receipt are clear and certain in its meaning no question arises as to the admissibility of intrinsic evidence in explanation.

Ohio Electric Car Co. v. LeSage, 182 Cal. 450, and

Burge v. Albany Nurseries, Inc., 176 Cal. 313.

It would not seem that the demeanor of the witnesses that testified for the appellant and petitioner were important, the only question being the real or implied interest of all the witnesses testifying. It would seem that the witness Page was biased and prejudiced by acts of the appellant and petitioner which had no bearing on the case. First, in that she was evicted, and second that her automobile was struck, as she says, by the appellant while the said appellant and petitioner was intoxicated. The tenant Lensky says she paid rent at the rate of $10.00 a week in cash and received a receipt for $7.00, and although she did not remember that the receipt contained the words, "Rate $1.00 a day," she only complained in the first instance and continued to pay rent for months without taking any further exception. The tenant Hall paid excessive rent, according to her statement, for her daughter, but had no complaint with respect to her own rent. No other tenants, over a period of many years, made any complaint. The agent of the petitioner, the defendant Shore, who was called as a witness under Rule 43(b) of the Federal Rules of Civil Procedure, only testified as to the ownership and the rent of the cabin in the rear of the premises, which did not belong to the petitioner.

Reasons for Granting Writ.

Petitioner urges that a writ of certiorari be granted in this case to review the record on the grounds and for the reasons that your petitioner verily believes that due consideration was not given to the evidence which she produced at the time of the trial in the District Court and that undue weight and consideration was given to the testimony introduced on behalf of the respondent.

Conclusion.

In conclusion emphasis is respectfully placed upon whether or not the Findings of Fact were consistent with the testimony adduced at the trial, and whether or not the Conclusions of Law were consistent with the testimony as adduced at the trial.

For the foregoing reasons, it is submitted this petition for a writ of certiorari should be granted.

Respectfully submitted,

LELA WILCOX,

In Propria Persona.

State of California, County of Los Angeles—ss.

Lela Wilcox, being first duly sworn, deposes and says, that she is the petitioner named in the foregoing Petition for Writ of Certiorari; that she has read the foregoing Petition for Writ of Certiorari and knows the contents thereof; and that the same is true of her own knowledge except as to the matters which are therein stated upon her information or belief, and as to those matters, that she believes them to be true.

LELA WILCOX.

Subscribed and sworn to before me this 25th day of October, 1950.

(Seal) MARGUERITE F. CRIPPS,

Notary Public in and for the County of Los Angeles, State of California.

My commission expires Jan. 3, 1952.

APPENDIX A.

Law of the United States.

Emergency Price Control Act of 1942, as amended (50 U. S. C. A. 901, *et seq.*).

> Sec. 205 (a). Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

Housing and Rent Act of 1947, as amended (50 U. S. C. A. 1881, *et seq.*).

> Sec. 206 (b). Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any act or practice which constitutes or will constitute a violation of any provision of this title, he may make application to any Federal, State, or Territorial court of competent jurisdiction, for an order enjoining such act or practice, or for an order enforcing compliance with such provision, and upon a showing by the Housing Expediter that such a person has engaged or is about to engage in any such act or practice a permanent or temporary injunction, restraining order, or other order shall be granted without bond.